

1 CRAIG M. RANKIN (SBN 169844)
2 ANNE E. WELLS (SBN 155975)
3 LEVENE, NEALE, BENDER, RANKIN & BRILL L.L.P.
4 1801 Avenue of the Stars, Suite 1120
5 Los Angeles, California 90067
6 Telephone: (310) 229-1234
7 Facsimile: (310) 229-1244

8 Attorneys for Chapter 11
9 Debtor and Debtor in Possession

FILED
July 16, 2004
U.S. Bankruptcy Court
Santa Rosa, CA

10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SANTA ROSA DIVISION

13 IN RE:

Case No. 04-10986-AJ

14 CHARDONNAY/CLUB SHAKESPEARE,
15 INC., a California corporation,

Chapter 11

16 Debtor.

HEARING DATE

Date: July 19, 2004

Time: 9:00 a.m.

Place: 99 S. "E" Street
Santa Rosa, CA 95404

17
18 **STIPULATION OF DEBTOR AND SECURED LENDER INVESTMENT GRADE
19 LOANS FOR USE OF CASH COLLATERAL; ORDER THEREON**

20 Chardonnay/Club Shakespeare, Inc., debtor and debtor in possession herein (the
21 "Debtor") and subordinated secured lender Investment Grade Loans ("IGL"), by and through
22 their respective counsel, hereby enter into this Stipulation for Use of Cash Collateral (the
23 "Stipulation") as follows:

24 **RECITALS**

25 1. On April 21, 2004 (the "Petition Date"), the Debtor filed a voluntary petition
26 under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued to
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1 operate its business and manage its affairs as a debtor in possession pursuant to Sections 1107
2 and 1108 of the Bankruptcy Code.

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4 2. The Debtor is obligated to IGL in the approximate amount of \$4.2 million secured
5 by liens encumbering substantially all of the Debtor's assets pursuant to two separate Deeds of
6 Trust, Absolute Assignment of Rents and Leases and UCC Financing Statements recorded June
7 14, 2002 (the "IGL Financing Documents"). Under the IGL Financing Documents, the non-
8 default contract rate of interest on \$3.3 million is 16% and 14.5% on \$900,000 of the total \$4.2
9 million debt.

10 3. The IGL obligation is subordinated to the security interest of Owens Mortgage
11 Investment Fund, a California Limited Partnership ("Owens") pursuant to a Subordination
12 Agreement dated February 5, 2003 and recorded April 7, 2003. The Debtor is obligated to
13 Owens in the approximate amount of \$5.76 million, secured by a first priority security interest in
14 substantially all of the Debtor's assets based upon a Deed of Trust, Assignment of Rents and
15 UCC Financing Statement recorded April 7, 2003.

16 4. On April 21, 2004, the Debtor filed its "Emergency Motion for Authority to Use
17 Cash Collateral on an Interim Basis Pending a Final Hearing (the "Cash Collateral Motion"). On
18 April 23, 2004, the Court entered the "Order Granting Debtor's Emergency Motion for Authority
19 to Use Cash Collateral..." (the "Interim Order"). Pursuant to the terms of the Interim Order, the
20 Debtor is authorized, until the entry of a subsequent order of this Court, to use cash collateral to
21 pay the ordinary and necessary business expenses of the Debtor as set forth in a Budget attached
22 to the Cash Collateral Motion.

23 5. Pursuant to the Interim Order, as adequate protection of their interests pending the
24 a final hearing on the Cash Collateral Motion, pursuant to Bankruptcy Code §§ 361, 362, and
25 363, Owens and IGL (the "Cash Collateral Lenders") were granted replacement liens in the post-
26 petition assets of the Debtor's estate (other than avoidance actions) in the same collateral and
27 only to the same extent, validity and priority of such Cash Collateral Lender's pre-petition liens
28 in the Debtor's assets.

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2 6. IGL has consented to the Debtor's use of Cash Collateral subject to the terms and
3 conditions of this Stipulation. The parties believe that the entry of an order approving this
4 Stipulation is in their best interests and the best interests of the bankruptcy estate and creditors
5 thereof.

6 **NOW, THEREFORE**, based upon the foregoing recitals, the parties stipulate and agree,
7 subject to Court approval, as follows:

8 **STIPULATION**

9 **A. Definition of Cash Collateral.** The term "Cash Collateral," as used in this
10 Stipulation, is defined as all of the prepetition and postpetition proceeds derived from or in
11 connection with IGL's prepetition collateral.

12 **B. Term.** The Debtor's authority to use Cash Collateral shall terminate
13 ("Termination Event") on the earlier of: (i) the effective date of any confirmed plan of
14 reorganization; (ii) the date upon which the IGL Obligation is paid in full; (iii) upon default by
15 the Debtor of any provision, term, or condition of this Stipulation, or of any Stipulation between
16 the Debtor and Owens for the use of Cash Collateral, which is not cured as hereinafter provided,
17 or, (iv) upon further order of this Court. Notwithstanding a Termination Event, the parties may
18 extend the term of this Stipulation to allow for the Debtor's continued use of Cash Collateral
19 under the terms and conditions of this Stipulation by written agreement of the parties and without
20 further order of the Court or a hearing.

21 **C. Use of Cash Collateral.** The Debtor shall be authorized to use Cash Collateral as
22 follows:

23 1. All Cash Collateral shall be deposited, upon receipt, in appropriate debtor-
24 in-possession bank accounts. The Debtor shall advise IGL and the Official Committee of
25 Unsecured Creditors appointed in this case (the "Committee") of the identity and location of all
26 debtor-in-possession bank accounts.

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2 2. The Debtor shall be entitled to use Cash Collateral to pay the reasonable,
3 ordinary, and necessary expenses of operating and maintaining its business (the "Ordinary
4 Expenses"), subject to each of the following terms and conditions:

5 (a) the Debtor may use Cash Collateral for the items contained in the
6 Budget attached hereto as Exhibit "A". The Debtor shall update the Budget as
7 and when necessary and submit the updated Budget to IGL and the Committee.
8 The updated Budget shall thereafter govern subsequent Cash Collateral use and
9 no Court order is required to substitute an updated Budget. If the parties do not
10 agree on an updated Budget, the matter will be promptly submitted to the
11 Bankruptcy Court for determination on an expedited basis.

12 (b) the Debtor's use of Cash Collateral is expressly limited to the specific
13 items and amounts as set forth in the Budget, except that the Debtor may exceed
14 the budgeted sum in any single month for any itemized expense category by no
15 more than 15% plus any prior period expense item that was incurred but not paid
16 in such prior period (subject to the same 15% limitation). If actual expenditures
17 for any line items are less than Budget, the difference shall carryover to the
18 following months.

19 **D. Postpetition Interest Payments to IGL.** As additional adequate protection of
20 IGL's interest in the Cash Collateral, commencing with the July 1st, 2004, payment, and each
21 month thereafter, but which shall be paid on the 15th of the each month (commencing on July
22 15th, 2004) until the Termination Date, the Debtor shall make monthly interest payments to IGL
23 based upon a rate of 10% per annum on the outstanding balance of its obligations to IGL (the
24 "Agreed Interest Payments"). The July payment may be delayed until entry of an order by the
25 Bankruptcy Court approving this Stipulation. Acceptance of the Agreed Interest Payments shall
26 not be deemed a waiver of any rights of IGL, including, but not limited to, the right to seek relief
27 from the automatic stay, or the right to seek payment of any difference between the contract rate
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(including the default rate), and the amount of the Agreed Interest Payments, or a waiver of any of rights of the Debtor, the Committee or any other third party with regard thereto.

E. Replacement Lien During the term of this Stipulation and as additional adequate protection of IGL's interest in the Cash Collateral, as provided in the Interim Order, IGL shall continue to have a replacement lien upon all postpetition assets of the Debtor's estate as provided in the Interim Order (except any avoidance actions arising under Bankruptcy Code Sections 544, 545, 546, 547, 548, 549, 550 or any similar provisions of the Bankruptcy Code) to the same extent, validity and priority of IGL's prepetition liens upon and security interests in the Debtor's assets and to the extent of the diminution in the value of the prepetition Collateral.

F. Reporting Requirements During the term of this Stipulation, the Debtor shall deliver to IGL all monthly operating reports and interim operating statements as and when filed by the Debtor with the Office of the United States Trustee.

G. No Waiver Nothing contained in this Stipulation and/or the order thereon shall be deemed or construed to waive, reduce, or otherwise diminish the rights, claims and/or defenses of IGL, the Debtor, or the Committee that each party may have against the other.

H. Default Subject to the provisions of Paragraph 3, if the Debtor fails to fully and timely perform any provision, term or condition of this Stipulation which is not cured within 5 business days of the notification of the alleged default as provided below (the "Cure Period"), the Debtor shall be in default under this Stipulation (the "Default Date"). Upon default under this Stipulation by the Debtor, the Debtor's right to use Cash Collateral shall terminate, and any such Cash Collateral shall be deposited in a segregated account for the benefit of IGL. In the event that IGL asserts a default by the Debtor, it shall give oral notice via telephone and written notice via facsimile, messenger, or overnight delivery to the Debtor's counsel and Committee's counsel. Notice of any default shall be provided to the Debtor's counsel at following address and fax number:

Anne E. Wells, Esq.
Levene, Neale, Bender, Rankin & Brill L.L.P.

1801 Avenue of the Stars Suite 1120
Los Angeles, CA 90067
Fax: (310) 229-1244
Phone: (310) 229-1234

The Debtor shall have continuing authority to use Cash Collateral during the Cure Period. If the Debtor disputes that a default has occurred and the parties cannot resolve the dispute informally within the Cure Period, the Debtor shall file a motion on shortened notice and submit the matter to the Court for determination of whether a default has occurred. The Debtor shall have continuing authority to use Cash Collateral until a judicial determination is made. The only issues for determination by the Court are whether an event of default occurred and whether such default has been cured.

I. Bankruptcy Court Order. This Stipulation is subject to entry of an order of the Bankruptcy Court approving the Stipulation.

Dated: July 15, 2004

CHARDONNAY/CLUB SHAKESPEARE, INC.

By: /s/ Anne E. Wells
ANNE E. WELLS
LEVENE, NEALE, BENDER, RANKIN & BRILL,
L.L.P.
Attorneys for Chardonnay/Club Shakespeare, Inc.

Dated: July 15, 2004

INVESTMENT GRADE LOANS

By: /s/ Patric Kelly
PATRIC KELLY
ADLESON, HESS & KELLY
Attorneys for Investment Grade
Loans

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AGREED AS TO FORM AND CONTENT

Dated: July 15, 2004

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS

By: /s/ Christopher Allots

CHRISTOPHER ALLIOTS
SULMEYER KUPETZ
Attorneys for Official Committee of Unsecured
Creditors

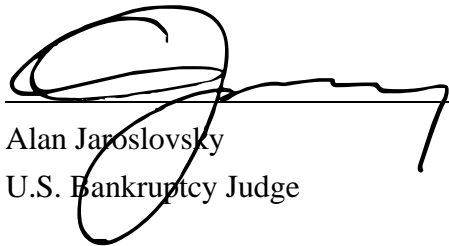
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ORDER

The foregoing Stipulation is hereby approved.

IT IS SO ORDERED.

Dated: July 16, 2004



Alan Jaroslovsky
U.S. Bankruptcy Judge

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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is: 1801 Avenue of the Stars, Suite 1120, Los Angeles, California 90067.

On July 15, 2004, I served the foregoing document(s) described as:
STIPULATION OF DEBTOR AND SECURED LENDER INVESTMENT GRADE LOANS FOR USE OF CASH COLLATERAL; ORDER THEREON
on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

SEE ATTACHED LIST\

 x (*By Mail) I caused such envelope with postage thereon, fully prepaid to be placed in the United States mail. Executed on July 15, 2004, at Los Angeles, California.

 (**By Federal Express/Overnight Mail) I caused such envelope to be delivered by Federal Express (or Express Mail), next business day delivery to the offices of the addressee. Executed on _____, 2004, at Los Angeles, California.

 (By Facsimile) I caused said document to be sent via facsimile. Executed on _____ 2004, at Los Angeles, California.

 (By Personal service) I caused such envelope to be delivered by hand to the offices of the addressee. Executed on _____, 2004 at Los Angeles, California.

 X (Federal) I declare that I am an employee in the offices of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Bambi Clark
Bambi Clark

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Jack Barry (3556-15)
Michelle Waldor
Chardonnay/Club Shakespeare, Inc.
2555 Jamieson Canyon Road (Hwy 12)
Napa, CA 94558

Ed Myrtle
Office of the U.S. Trustee (3556-16)
250 Montgomery Street, #1000
San Francisco, CA 94104-3410

Counsel for TMT Enterprises
Anthony Boskovich
Law Offices of Anthony Boskovich
28 N. First Street, 6th Floor
San Jose, CA 95113-1210

Counsel for American Koyu Corp.; Eagle
Vines Vineyards & Golf Club, LLC et al
Lori S. Ross, Esq.
Greenberg, Fields & Whitcombe, LLP
21515 Hawthorne Blvd. #450
Torrance, CA 90503

Counsel for Owens Financial
A. Nick Shamiyeh, Esq.
2221 Olympic Blvd. #100
Walnut Creek, CA 94595

Counsel for Creditors Committee
Chris Alliotts, Esq.
Sulmeyer Kuptez
1080 Marsh Road, Suite 110
Menlo Park, CA 94025

Counsel for Investment
Grade Loans
Patric J. Kelly, Esq.
Adleson, Hess & Kelly
577 Salmar Ave., 2nd Floor
Campbell, CA 95008

RSN
Mr. Romain P. Clerou
19191 Spring Drive
Sonoma, CA 95476

Counsel for Kip Kendall; Randall
Hoyle & Chardonnay Action
Committee
Richard W. Abbey, Esq.
Abbey, Weitzenberg, Warren & Emery
100 Stony Point Rd. #200
Santa Rosa, CA 95402-1566

Counsel for Chardonnay Action Committee
(State Court Action)
M. Michael Murphy
Murphy, Logan, Bardwill & Loomis
2350 First Street, P.O. Box 5540
Napa, CA 94581-0540

RSN- Counsel for Container Applications Intern'l
Clayton W. Kent, Esq.
Brayton Purcell
222 Rush Landing Road
P.O. Box 6169
Novato, CA 94948-6169

RSN – Counsel for Westamerica Bank
Gloria M. Oates, Esq.
Dutra & Gates
2377 Gold Meadow Way #215
Gold River, CA 95670

Committee Member
Jane Smith
Nikon Precision, Inc.
1399 Shoreway Road
Belmont, CA 94002

Committee Member
Isao Nakagawa
1 Daniel Burnham Court, #103
San Francisco, CA 94109

Committee Member
Robert Chaulk
Senior Vice President
California Bank & Trust
401 W. Whittier Blvd., Suite 200
La Habra, CA 90631

Committee Member
Yoichi Erikawa
American Koyu Corporation
Eagle Vines Vineyards & Golf Club
180 Montgomery Street, Suite 1980
San Francisco, CA 94104

Committee Member
Romain P. Clerou
19191 Spring Drive
Sonoma, CA 95476

RSN – Counsel for William Wolf
Myles R. Dresslove, Esq.
635 First Street
Santa Rosa, CA 95404

Secured
Eu Venture, Inc. (3556-18)
c/o Financial Advantage
2045 Mt. Diablo Street #105
Concord, CA 94520

Secured
Owens Mortgage Investment Fund
P.O. Box 2400
Walnut Creek, CA 94595

Secured
Frank Paoletti (3556-23)
c/o Financial Advantage
2045 Mt. Diablo Street, #105
Concord, CA 94520

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Secured

Gary Chase & Hans Morkner (3556-19)
c/o Financial Advantage
2045 Mt. Diablo Street #105
Concord, CA 94520

Secured

Investment Grade Loans (3556-22)
289 S. San Antonio Road #202
Los Altos, CA 94022

Secured

Navone/Liberty Worldwide (3556-24)
c/o Financial Advantage
2045 Mt. Diablo Street #105
Concord, CA 94520

Secured

YTY Consulting, Inc.
P.O. Box 2811
Napa, CA 94558

Secured

Napa County Tax Collector
1195 Third Street, Room 108
Napa, CA 94559-3035

Secured

Nissan Motor Acceptance Corporation
P.O. Box 660366
Dallas, TX 75266-0366

RSN – Counsel to Financial

Pacific Leasing LLC
Laurence S. Ross, Esq.
Spiwak & Iezza, LLP
2660 Townsgate, Suite 530
Westlake Village, CA 91361-5700

IKON Financial Services

Bankruptcy Administration/Jeffrey Hall
IOS Capital, LLC
1738 Bass Road
P.O. Box 13708
Macon, GA 31208-3708